IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8884 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAT TEXTILE MARKET CO-OP. SHOPS & WAREHOUSING SOCIETY

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No. 8884 of 1999

MR BA SURTI for Petitioner

MR PRASHANT G DESAI for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/07/2001

ORAL JUDGEMENT

The petitioner is a co-operative society running a textile market in the city of Surat. The market building is situate on the Ring Road. In front of the building, the open land of the width of 22 feet is kept open. The Municipal Commissioner of Surat Municipal Corporation issued notice dated 15.10.1999 (Annexure "A") informing the petitioner society that as per Section 213 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the BPMC Act"), the Surat

Municipal Corporation had resolved to acquire 360.25 sq.mtrs. of land of Final Plot No. 141 Paiki + 142 Paiki of Town Planning Scheme No. 8 (Umarwada) with alignment line falling on the road and with anything on it. The petitioner society was, therefore, required to hand over possession of such land to the Town Planner failing which the Corporation will take appropriate steps at the petitioner's expense. The Corporation further informed the petitioner that the value of the property was to be given to the petitioner for which purpose the petitioner could meet the Town Planner of the Surat Municipal Corporation.

2. The aforesaid notice has been challenged in this petition mainly on the ground that the width of the Ring Road under the Town Planning Scheme is only 150 feet as mentioned in the public notice published in Gujarat Mitra dated 10.5.1987 and that, therefore, the Corporation cannot make a change in the final Town Planning Scheme without getting the sanction of the State Government.

Secondly, it is contended that at present the width of the Ring Road is 190 ft. and that since it is already in excess of the width of the Town Planning road under the sanctioned Town Planning Scheme, the respondent cannot increase the width of the road without following the procedure prescribed under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred as "the Town Planning Act").

Thirdly, it is contended that even if the Corporation can make any change in the width of the road, the Corporation will have to follow the procedure prescribed by Section 210(1)(b) of the BPMC Act which requires approval of the Standing Committee before the Municipal Commissioner can prescribe a fresh line in substitution for any line. It is submitted that in the instant case, no such resolution has been passed by the Standing Committee nor is it given any approval to the Municipal Commissioner to make any change in the existing street line.

Lastly, it is submitted that looking to the large number of shops and visitors to the petitioner-society's market, the margin land of 22 ft. in front of the shops in the front line is absolutely necessary.

3. In response to the notice issued by this Court, affidavit in reply has been filed by the Town Planner of the respondent Corporation. It is submitted that the Municipal Commissioner is empowered to exercise his

powers under Sections 210 and 213 of the BPMC Act without fettered by any provisions of the Town Planning Act. It is further submitted that by order No. 3443 dated 3.8.1999, the Municipal Commissioner has passed the order under Section 210(1)(a) for prescribing the alignment on the Ring Road for the first time under the BPMC Act. Hence, there was no need for any approval or resolution of the Standing Committee since the power is not exercised under Section 210(1)(b).

On facts, it is pointed out that in the interest of public at large, the Corporation is required to widen the Ring Road. In view of the increase in the number of vehicles and population, the Corporation has to resort to the exercise of widening the road. Further it is pointed out in para 6 of the reply affidavit that pursuant to the notice, the office bearers of the petitioner society met the Municipal Commissioner. They made a representation that in view of the number of business persons running their business in the textile market and also a number of persons visiting the market daily for business purposes, they required a reasonable margin. Ultimately, they requested the Municipal Commissioner to keep 15 ft. margin. In response to the said request, the Municipal Commissioner agreed that there will be 15 ft. margin in front of the front line shops for demarcation of the road line.

4. On behalf of the petitioner, rejoinder affidavit dated 10.7.2001 has been filed.

5. The learned counsel for the parties have made their submissions on the basis of the pleadings already referred to above. Mr Prashant Desai, leanred counsel appearing for the respondent Corporation adds that the road line has also been demarcated on the site in such a manner that there is 15 ft. margin line in front of the front line shops. Mr Desai further points out that as clearly stated in the Municipal Commissioner's order dated 3.8.1999, under the Town Planning Scheme sanctioned by the State Government on 31.1.1996, the Ring Road had width of 60 mtrs. and the road line has now been demarcated for the first time under Section 210(1)(a) of the BPMC Act.

6. As far as the first two contentions are concerned, the decision of this Court in Premjibhai D. Karane vs. Ahmedabad Municipal Corporation, 1996(2) GLH 230 is a complete answer. After examining the scheme of the Town Planning Act as well as the BPMC Act, this Court has held that while there is a provision of drawing a

street line or a regular line under the BPMC Act, there is no such provision in the Town Planning Act and that in its wisdom the Legislature has conferred power of drawing a road line on the Municipal Commissioner as there is no conflict between the provisions of the BPMC Act and the Town Planning Act.

7. Even as far as the third contention is concerned, in the aforesaid decision, this Court has held that when the Municipal Commissioner prescribes a road line under the BPMC Act for the first time, the procedure prescribed by Section 210(1)(b) is not applicable at all. The statutory provision is applicable only when an existing road line already prescribed under the BPMC Act is sought to be altered or substituted under Section 210(1)(b) of the BPMC Act. It is required to be noted that Section 210(1)(a) itself contemplates that until a street line is prescribed by the Municipal Commissioner under the said clause, a regular line of a public street operative under any other law for the time in force in any part of the city shall be deemed to be a street line for the purposes of the BPMC Act. Accordingly, the outer lines of the public road demarcated in a Town Planning Scheme would operate as a regular line of a public street until the Municipal Commissioner prescribes the street line for the first time under Section 210(1)(a) of the BPMC Act.

In view of the above statuary provisions, as interpreted by this Court in the aforesaid decision, it is clear that the street line of the Ring Road as prescribed under the Town Planning scheme operated as a regular line for the Ring Road until the Municipal Commissioner for the first time prescribed the street line of 200 ft. on 3.8.1999 vide order No. 3443. Hence, on and from 3.8.1999, the regular street line or road line prescribed for the first time under Section 210(1)(a) was the one prescribed by the Municipal Commissioner as per the aforesaid order dated 3.8.1999. Since this was for the first time that a road line was prescribed under the BPMC Act, there was no question of following any procedure under Section 210(1)(b) of the BPMC Act. In view of the above, the third contention is also required to be rejected.

8. As far as the last contention based on the factual aspects is concerned, the Municipal Commissioner is the best authority to decide as to how the road line is to be prescribed. In any view of the matter, the Municipal Commissioner after giving a hearing to the office bearers of the petitioner-society, acceded to their request for keeping a margin of 15 ft. in front of

the petitioner-society's shops in the front line. It appears to the Court that originally the Municipal Commissioner intended to take 10 ft. out of the margin land of 22 ft. in front of the petitioner-society which would have increased the width of the road from 190 ft. to 200 ft. However, in due deference to the request made by the office bearers of the petitioner society, the Municipal Commissioner has agreed to keep a margin of 15 ft. Hence, the Corporation is required to draw only the line beyond 15 ft. from the front line shops of the petitioner society.

It is also stated in the reply affidavit filed on behalf of the respondent that except the petitioner-society and the property holders of Final Plot No. 136, the lands have been acquired from all other properties so as to widen the road and the others have already handed over possession of their respective parcels of land to the respondents to carry out the implementation of the project of widening of the Ring Road.

9. In view of the above discussion, there is no warrant for interfering with the impugned notice. The petition is accordingly dismissed with a clarification that the respondent has demarcated the margin land of the width of 15 ft. in front portion of the petitioner society's shops.

Notice is discharged. Ad-interim relief granted earlier stands vacated.

10. At this stage, Mr Surti for the petitioner prays that the ad-interim relief granted earlier may be continued for some time to enable the petiioner to have further recourse in accordance with law.

In view of the above request, the ad-interim relief granted earlier shall continue till 3.8.2001.

(M.S. Shah, J.)
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